

July 2, 2019

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

**DIVISION II**

STATE OF WASHINGTON,

Appellant,

v.

J.C.F.,

Respondent.

No. 50014-1-II

UNPUBLISHED OPINION

MAXA, C.J. – The State appeals a juvenile court order granting JCF’s petition, filed when he was 33 years old, to restore his right to own or possess a firearm. JCF was prohibited from possessing or owning a firearm as a result of an adjudication of first degree child molestation in juvenile court. The State argues that the juvenile court did not have jurisdiction to restore an adult’s firearm rights.

We decide this case on other grounds without addressing jurisdiction. We hold that the juvenile court erred in granting JCF’s petition because RCW 9.41.040(4)(a) generally prohibits a person convicted of a sex offense from petitioning for the restoration of firearm rights and no exception to that prohibition applies here. Accordingly, we reverse the juvenile court’s order restoring JCF’s firearm rights and remand for the juvenile court to dismiss JCF’s petition.

**FACTS**

In 1999, JCF pleaded guilty to first degree child molestation in Clark County juvenile court. As a result of JCF’s adjudication, RCW 9.41.040(1)(a) prohibited him from owning,

possessing, or controlling a firearm. JCF subsequently obtained an order relieving him of his obligation to register as a sex offender.

In 2016, JCF filed a petition in juvenile court to have his right to own or possess a firearm restored under the same cause number as his original adjudication. He filed the petition in the same case in which he pleaded guilty to first degree child molestation. The State conceded that a Supreme Court case, *State v. R.P.H.*, 173 Wn.2d 199, 265 P.3d 890 (2011), allowed JCF to petition for restoration of firearm rights even though he was a sex offender because of the order relieving him of his obligation to register as a sex offender. But the State argued that the juvenile court lacked jurisdiction.

The juvenile court ruled that it could exercise jurisdiction and entered an order restoring JCF's firearm rights. The State appeals the juvenile court's order.

## ANALYSIS

### A. LEGAL BACKGROUND

Under RCW 9.41.040(1)(a), a person cannot legally own, possess, or control any firearm if the person has been convicted of a "serious offense." The term "serious offense" includes first degree child molestation. Former RCW 9.41.010(21) (2015). RCW 9.41.047(1)(a) provides that at the time a person is convicted of an offense making the person ineligible to possess a firearm, the court shall notify the person that he or she "may not possess a firearm unless his or her right to do so is restored by a court of record."

RCW 9.41.040(4)(a) states that a person who has been prohibited from possessing a firearm under subsection (1) may, subject to certain statutory requirements, petition a court of record to have his or her right to possess a firearm restored. If the petitioner has met the

statutory requirements, the court performs a ministerial function to restore the petitioner's rights. *State v. Swanson*, 116 Wn. App. 67, 78, 65 P.3d 343 (2003).

A person may file a petition to have his or her right to possess a firearm restored in "(i) [t]he court of record that ordered the petitioner's prohibition on possession of a firearm; or (ii) [t]he superior court in the county in which the petitioner resides." RCW 9.41.040(4)(b).

**B. INABILITY OF SEX OFFENDER TO PETITION FOR RESTORATION OF FIREARM RIGHTS**

RCW 9.41.040(4)(a) provides that a person who "has not previously been convicted . . . of a sex offense prohibiting firearm ownership" or other types of felonies "may petition a court of record to have his or her right to possess a firearm restored" under certain circumstances. This language precludes a person convicted of a sex offense from petitioning for the restoration of his or her firearm rights. *Graham v. State*, 116 Wn. App. 185, 189-90, 64 P.3d 684 (2003).

RCW 9.41.040(3) states that if a person's conviction has been subject to a "pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted," that person will not be precluded from possessing firearms.

In *R.P.H.*, the Supreme Court held that an order relieving a person from an obligation to register as a sex offender constituted an "equivalent procedure" to a certificate of rehabilitation, which would allow the restoration of firearm rights under RCW 9.41.040(3). 173 Wn.2d at 203-05. Here, JCF had obtained an order relieving him of his obligation to register as a sex offender. Both counsel and the juvenile court apparently believed that *R.P.H.* was controlling authority and allowed JCF to petition for the restoration of his firearm rights.

However, after *R.P.H.* was decided, the legislature enacted RCW 9A.44.142(5), which states, "If a person is relieved of the duty to register pursuant to this section, the relief of

registration does not constitute a certificate of rehabilitation, or the equivalent of a certificate of rehabilitation, for the purposes of restoration of firearm possession under RCW 9.41.040.”

Counsel and the juvenile court apparently were unaware that RCW 9A.44.142(5) had negated the holding in *R.P.H.*

C. RAP 12.1(b) – ISSUE NOT BRIEFED

The parties briefed whether the juvenile court had jurisdiction to consider JCF’s petition and whether the juvenile court is a “court of record” authorized to restore firearm rights under RCW 9.41.040(4)(b), and the case was argued on those issues. However, RAP 12.1(b) provides:

If the appellate court concludes that an issue which is not set forth in the briefs should be considered to properly decide a case, the court may notify the parties and give them an opportunity to present written argument on the issue raised by the court.

Under this provision, we have the authority to “raise an issue sua sponte and rest [our] decision on that issue.” *State v. Aho*, 137 Wn.2d 736, 741, 975 P.2d 512 (1999).

If JCF is precluded as a matter of law from petitioning for a restoration of his firearm rights because he was convicted of a sex offense, the jurisdiction and court of record issues the parties briefed are immaterial. Therefore, we requested supplemental briefing under RAP 12.1(b) on the effect of RCW 9A.44.142(5) on JCF’s ability to even petition for a restoration of his firearm rights.

D. RCW 9.41.040(4)(a) ANALYSIS

The law is clear under RCW 9.41.040(4)(a) that a person convicted of a sex offense cannot petition for the restoration of his or her firearm rights. *Graham*, 116 Wn. App. at 189-90. The exception is if that conviction has been subject to a “pardon, annulment, certificate of rehabilitation, or other equivalent procedure” as provided in RCW 9.41.040(3). But RCW 9A.44.142(5) clarified that a sex offender cannot petition for the restoration of his or her firearm

rights even if a court has entered an order relieving him or her of the obligation to register as a sex offender.

JCF was adjudicated of first degree child molestation, a sex offense. And although he obtained an order relieving him from the obligation to register as a sex offender, RCW 9A.44.142(5) establishes that this type of order no longer has significance for the ability to restore firearm rights.

JCF argues in his supplemental brief that RCW 9.41.040(4)(a) and *Graham* are inapplicable here because they address adult “convictions,” not juvenile “adjudications.” However, RCW 9.41.040(3) states, “Notwithstanding RCW 9.41.047 or any other provisions of law, as used in this chapter, a person has been ‘convicted’, whether in an adult court or adjudicated in a juvenile court, at such time as a plea of guilty has been accepted, or a verdict of guilty has been filed.” Therefore, JCF was “convicted” for purposes of RCW 9.41.040(4)(a).

A juvenile adjudication may be treated differently than an adult conviction if the juvenile record has been sealed. Once the record has been sealed, “the proceedings in the case shall be treated as if they never occurred.” RCW 13.50.260(6)(a). Therefore, when the record of a person’s juvenile adjudication has been sealed, the person is treated as not having been previously convicted under RCW 9.41.040(3) for firearm possession purposes.<sup>1</sup> *In re Restoration of Firearm Rights of Nelson*, 120 Wn. App. 470, 478-80, 85 P.3d 912 (2003). Here, however, JCF’s juvenile record was not sealed at the time the court considered his petition.

We hold that JCF is precluded as a matter of law from filing a petition to have his firearm rights restored because of his first degree child molestation adjudication. Therefore, we need not

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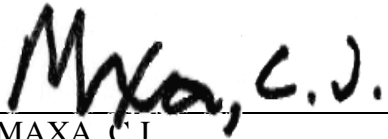
<sup>1</sup> If a juvenile record has been sealed, any petition for restoration of firearm rights would have to be filed in superior court because the juvenile court case would be treated as if it never existed. RCW 13.50.260(6)(a).

address whether the juvenile court has jurisdiction to consider his petition or whether the juvenile court is a court of record.

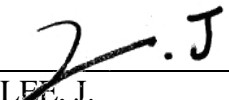
CONCLUSION


We reverse the juvenile court's order restoring JCF's firearm rights and remand for the juvenile court to dismiss JCF's petition.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

  
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MAXA, C.J.

We concur:

  
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LEE, J.

  
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MELNICK, J.